IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17353 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAKHIBEN W/O. BABUBHAI M KOLI

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 17353 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 02.12.2003 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four prohibition offences were registered against the petitioner before Southern Division Prohibition Police Station at C.R.No.617 of 2003, 1238/2003, 1478/2003 and 1612/2003 on 29.3.2003, 15.8.2003, 17.9.2003 and 29.9.2003 for offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was a headstrong person and he was engaged in bootlegging activities. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

6. At the final hearing, learned Advocate for the petitioner has argued that four offences under the Bombay Prohibition Act as aforesaid have been registered against the petitioner. She has also contended that the last offence registered against the petitioner was on 29.9.2003. That the order of detention has been passed on 2.12.2003. That there was delay in passing the order of detention. It has also been contended that the Police Inspector has recorded statements of the unnamed witnesses on 1.11.2003 and they have been verified by the detaining authority on 28.11.2003. The incident narrated in the said incident has actually taken place about one or one and half month prior to recording of statement by the Police Officer on 1.11.2003. Therefore, the actual incident must have taken place in last week of September, 2003. Therefore, looking to the date of the last registered offence and looking to the date of last unregistered offence, it can be said that the order of

detention has been passed after a delay of not less than two months.

7. In the present case, we find that the said delay has not been explained to any extent. It is required to be considered that in cases of preventive detenion the detaining authority should consider if there is immediate need to detain the detenu. In view of passage of time, it is difficult to accept that there was immediate need to detain the detenu in the present case. In that view of the matter, when the order of detention has been passed after inordinate delay of not less than two months and when the delay has not been explained to any extent, then such unexplained and inordinate delay is fatal to the order of detention and the detention order cannot be sustained in the eye of law in view of the unexplained and inordinate delay. Therefore, the petition is required to be allowed and the order of detention is required to be set aside on the ground of delay alone.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 02.12.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp